IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Bail Appl..No. 5540 of 2007()

CRIME NO. 366/07 OF VATANAPPALLY POLICE STATION

PETITIONERS/ACCUSED 1 & 2

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1. SHAJI @ SHAJAHAN, S/O.ABOOBACKER,
PUTHIYAVEETTIL VEEDU, NADUVILAKARA DESOM,
VATANAPPALLY.

2. SULEKHA, W/O.ABOOBACKER,
PUTHIYAVEETTIL HOUSE, NADUVILAKARA DESOM,
VATANAPPALLY.

BY ADV. SRI.P.K.VARGHESE
SRI.HRITHWIK

RESPONDENTS: COMPALINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5540 of 2007

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Dated this the 13th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations, inter alia, under Sections 498A, 304B and 306 I.P.C. The petitioners are the husband and mother-in-law of the deceased. She, a young woman, had allegedly fallen in love with the first accused. Their marriage had taken place on 26.5.2002. They belong to families who have great financial disparity. After the marriage, the mother-in-law allegedly harassed and vexed the deceased with the grievance that she had not brought sufficient wealth on marriage. The husband was initially affectionate. But later, after he returned from the place of employment abroad, the husband also started to vex and harass her. One child, aged about 4 years, was born in the wedlock. The wife allegedly committed suicide on 18.8.2007. The suicide was within the period of 7 years of marriage. There are indications to suggest that the victim was subjected to matrimonial cruelty. There is evidence to show that the lady had put an end to her life on 18.8.07. The deceased had left no suicide note. The case

diary was called for and perused by me. There are indications to suggest that shortly prior to the commission of suicide there was an incident in which the mother-in-law abused and harassed the victim. She did not get support from her husband also. The indications reveal that it is in these circumstances that she committed suicide without even leaving a suicide note. Investigation is in progress.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. He prays that directions under Section 438 Cr.P.C. may be issued in favour of the petitioners.

3. The application is opposed by the learned Prosecutor. All the indications presently available only confirm the allegations against the petitioners. This, at any rate, is not a fit case where the discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioners, submits the Prosecutor.

4. The case diary was perused by me. I find merit in the opposition. At this early stage of Investigation it is not necessary for me to advert to facts in greater detail. I am not embarking on a detailed discussion on the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I am convinced that this is not a fit case where the

discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioners. I agree with the learned Prosecutor that the petitioners must surrender before the Investigator or the learned Magistrate and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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